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the entry of the judgment, the court may on motion grant a new trial on various grounds, generally including prejudice of the jury and newly discovered evidence.<sup>9</sup> But since these statutes do not as a rule cover criminal cases,<sup>10</sup> and since equity has always refused to interfere in criminal cases where no property rights are involved,<sup>11</sup> the defendant in the case under discussion is without redress. His only hope lies in a pardon. This is obviously an inadequate and cumbersome remedy.<sup>12</sup> The executive has not the proper procedure for hearing and determining the merits of the question. From the point of view of the defendant, it is unjust, since he has the burden of proving his innocence to the executive, whereas, until justly convicted, he should be entitled to a presumption of innocence. And, further, he is denied an opportunity to prove that he has been unjustly accused. From the point of view of the state, the defendant should not be set at liberty until an impartial jury has acquitted him on the merits of the case. Thus the granting of a new trial can alone secure the rights of all parties.

Moreover, in this respect a sharp distinction should be noted between civil and criminal cases. In the former, it is clearly to the interest of the community that there be a definite time after which a judgment cannot be altered. Otherwise title to property would be insecure, and business would be unreasonably hampered. In criminal cases, on the other hand, no property rights can be prejudiced by altering the judgment at any time. The state is simply exacting punishment, and the life and liberty of the accused are at stake. It indeed seems a very mockery of justice to deny relief to one thus unjustly convicted on the mere technicality that the term has expired.<sup>13</sup> This gap in the law has been supplied in England by a statute creating a separate court for criminal appeals and giving to it a wide discretion in granting new trials at any time and on any grounds.<sup>14</sup> It is submitted that such legislation reaches an eminently satisfactory result, and should be followed in the United States.

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THE FIVE PER CENT CASE AGAIN.—Seemingly, rate problems, like the heads of the Hydra, are no sooner disposed of than they return twofold to plague their assailant. Upon a rehearing of the Five Per Cent Rate Case the Interstate Commerce Commission have modified their original decision. *The Five Per Cent Case*, 32 I. C. C. 325.<sup>1</sup> The Com-

<sup>9</sup> See 4 POMEROY, EQ. JUR., 3 ed., § 1365; *Fuller v. United States*, 182 U. S. 562; KY. CODES, § 344; BURNS' ANNOTATED IND. STATUTES, §§ 585, 587, 589.

<sup>10</sup> See *Klink v. People*, 16 Colo. 467; *Howard v. State*, *supra*.

<sup>11</sup> *Kerr v. Corporation of Preston*, 6 Ch. D. 463; *Portis v. Fall*, 34 Ark. 375; see 1 POMEROY, EQ. JUR., 3 ed., § 197. In a few exceptional cases, equity has interfered in criminal proceedings to protect property rights. *Iron Works v. French*, 12 Abb. N. C. 446.

<sup>12</sup> See *Sanders v. State*, 85 Ind. 318.

<sup>13</sup> Where the grounds for relief were known at the time judgment was entered, a limitation on the time within which to bring the motion may be perfectly just.

<sup>14</sup> 7 Edw. VII., c. 23.

<sup>1</sup> Cf. *The Five Per Cent Case*, 31 I. C. C. 551. For a *résumé* of this first decision, see 28 HARV. L. REV. 97. On September 19, 1914, the Commission ordered, "That

mission cannot properly be said to have reversed itself, for, as they point out, the events which have occurred since the original decision present a new situation. In the face of that situation the majority of the Commission deemed it necessary to extend the relief granted in the original decision. This they have done by extending the authorization of a five per cent increase in freight rates, there accorded only to the roads in Central Freight Association territory,<sup>2</sup> to the entire territory east of the Mississippi and north of the Ohio except the New England states.<sup>3</sup> And, whereas certain classes of freight were excepted from the operation of that decision, the only exceptions now made are rail-and-lake rates, rates on bituminous and anthracite coal, coke, and iron ore, and rates already fixed by unexpired orders of the Commission.<sup>4</sup> The rates on cement, starch, brick, tile, clay, and plaster, specially excepted from the prior increases, are now subject to a five per cent increase throughout this territory.

It will be recalled that in their original report the Commission were unanimous in the opinion that the revenues of the railroads in official classification territory were insufficient, but that the majority of the Commission were of the opinion that, except as to the roads in Central Freight Association territory, a horizontal increase in freight rates was neither a necessary nor proper remedy for the situation, and they suggested ten other sources of additional revenue for the petitioning carriers.<sup>5</sup> The considerations which prevailed upon a majority of the Commission to alter this decision were, first, the fact that the needs of the railroads were greater than had been anticipated, as evidenced by subsequent returns; second, the increased difficulties in the way of meeting these needs occasioned by the European war; third, the fact that the remedial measures suggested by the Commission in July were not adapted to meeting such a sudden contingency.

The completed returns for the fiscal year ending June 30, 1914, showed

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further hearing in said cases be, and is hereby, granted; said hearing to be limited to presentation of facts disclosed and occurrences originating subsequently to the date upon which the records previously made in these cases were closed."

<sup>2</sup> That part of the United States lying between the Ohio River and the lakes from the Mississippi to the Atlantic seaboard is known as official classification territory. For rate purposes it is divided into three sections: the New England states; the territory between the Atlantic seaboard and Buffalo and Pittsburg, known as trunk line territory; and the territory from Buffalo and Pittsburg to the Mississippi, known as Central Freight Association territory.

<sup>3</sup> Intra-territorial rates in New England were already being cared for by a thorough readjustment of interstate and intrastate rates carried out with the approval of the various state commissions in that territory. The only authorized increases in New England, therefore, were such as might be necessary to preserve the existing differentials between New England points and points in trunk line territory. The authorized increases in official classification territory generally were not confined to intra-territorial rates, but extended also to joint rates between official classification territory and outside points, provided no increase should exceed five per cent of the official classification carrier's portion of the rate. By a supplementary order the Commission has also permitted the railroads to increase some rates more than five per cent where necessary to preserve existing differentials.

<sup>4</sup> The rates here enumerated had either been recently increased, or proposed increases were under consideration by the Commission in other proceedings. See 32 I. C. C. 331.

<sup>5</sup> See 31 I. C. C. 551; 28 HARV. L. REV. 97.

the net operating revenues of the railroads in official classification territory to be lower than in any year since 1908, while the property investment had increased by over \$1,300,000,000 since that year. And the additional returns for the succeeding months of July, August, and September showed that the downward trend of revenues had by no means run its course.

The blow which the war in Europe struck our industry and commerce is too well known to need amplification here. The railroads in official classification territory must refund loans aggregating over \$500,000,000 within the next three years. In view of the enormous European investment in American railroads, and the effect which this great war must have upon the amount of capital available in the next few years and the rate of interest which it will command, it can scarcely be doubted that these railroads must suffer severely from the effects of that conflict.

The dissenting commissioners were not inclined to quarrel with these findings, but they doubted the legality and propriety of the Commission's changing its original decision because of them. Their attitude was, briefly, if this increase was unreasonable in July when the railroads admittedly needed increased revenue, how can the fact of a war in Europe and the fact that the needs of the railroads are greater than had been anticipated make this increase reasonable in December? Commissioner Harlan was inclined to the opinion that the Commission had no legal right or power to be governed in its regulation of rates "by conditions presumably temporary in their nature."<sup>6</sup>

However this may be, it would be unfortunate in the extreme if the Commission had no power to afford temporary relief to the railroads in an emergency. The real danger, as pointed out by both Commissioners Harlan and Clements,<sup>7</sup> is that this temporary relief will be hailed (as, indeed, it seems to have been hailed by many financial journals) as a permanent dispensation and the real remedies urged by the Commission in its original decision cast aside. No sensible merchant, who found his profits steadily declining, would think of making a blanket increase of five per cent in the prices of all his wares. The only permanently efficacious remedy for the general railroad situation would seem to be a thorough revision of rates and redistribution of charges, with an increasing attention to economy and efficiency in railroad management.<sup>8</sup> By these means alone can the Hydra's wounds be cauterized and the Herculean task accomplished.

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MILITARY TRIALS OF CIVILIANS IN TIMES OF PEACE. — Not long ago a storm of justifiable protest arose at the action of military authorities in West Virginia in trying and sentencing rioting strikers before military tribunals, without jury. The fact that this action was

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<sup>6</sup> See 32 I. C. C. 325, 335.

<sup>7</sup> See 32 I. C. C. 325, 335.

<sup>8</sup> Public hearings will commence this month upon a petition for a general increase of rates by the roads west of the Mississippi River. But the western roads are not asking for a horizontal increase in all rates, but propose a general overhauling of rates with advances ranging from two to thirty per cent according to traffic conditions.